STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-813

October 1, 2001

UNITEL, INC.
Proposed Rate Change

ORDER REJECTING SECOND STIPULATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we reject, for a second time, a Stipulation filed by Unitel and the Public Advocate. We reject the Second Stipulation because its proposed rate design is inconsistent with policies contained in our recently approved rule governing high cost universal service support for local exchange carriers, Chapter 288, and the Order Rejecting Stipulation issued in this case on August 28, 2001. We find that the proposed revenue reduction of $460,000 is reasonable, and we set forth guidelines for further proceedings.

II. DISCUSSION

On September 20, 2001, Unitel and the Public Advocate, the only parties to this case, filed a Second Stipulation that purported to settle all of the issues in this rate case, including both the Company's revenue requirement and rate design. As in the cases of an earlier Stipulation filed on July 27, 2001, the Second Stipulation proposed a reduction in the revenue requirement of $460,000. It also proposed to allocate this reduction entirely to a reduction in Unitel's intrastate access rates.

A. Revenue Requirement

We find that the proposed reduction in revenue requirement of $460,000 is reasonable. We also find, however, that the "flow-through" mechanism of Part III.D is unreasonable, and we therefore must reject the Second Stipulation for that reason. That provision states that two specified "exogenous" changes that in aggregate are greater than a net amount of $50,000 shall result in a rate adjustment. It also provides, however, that when that net amount exceeds $50,000, only the amount in excess of $50,000 is recoverable. Recovery thresholds are appropriately used to avoid the time and expense of trying to "true up" relatively small sums of money. However, once a threshold is exceeded, it is appropriate to redress the whole exogenous change, plus or minus.

Even without the problem described above, the Second Stipulation is an "integral document." Under Part III (I), "rejection or modification of any part of [the] Stipulation constitutes a rejection of the whole." Because we reject the rate design proposal contained in the Stipulation, we are not at this time able to approve the

revenue requirement proposal, even if Part IV.D did not contain the problem we have described above.

B. Rate Design

In the Second Stipulation, Unitel and the Public Advocate propose to allocate the entire revenue reduction amount of $460,000 to a reduction in the Company's intrastate access rates. In the First Stipulation, the parties proposed to devote the entire revenue requirement reduction to a toll calling plan for Unitel residential basic service customers. We found that the earlier proposal was "directly contrary to the access parity statute."

The proposal contained in the Second Stipulation is a substantial improvement over the proposal in the first Stipulation because it assigns the entire amount of the decrease in revenue requirement to a reduction in access rates. However, the proposal fails to address the present level of Unitel's basic service rates. In our August 28 Order, we noted that Section 3(B) of Chapter 288 (universal service funding) requires that for an ILEC to receive universal service funding, it must not only reduce its access rates to levels required by the access parity statute but must also increase its local service rates to levels that are no less than those of Verizon for equivalent calling areas. (The rule does allow phasing in those rates.) We stated:

> While Chapter 288 does not apply directly to Unitel's immediate situation, it should be clear that an ILEC that continues to maintain access rates that exceed its interstate rates is in effect receiving universal service funding, albeit from IXCs and IXC customers only, rather than from the broad base of carriers that must contribute to the Maine Universal Service Fund (MUSF).

Consistent with the policies of Chapter 288 and the fact that, under the Second Stipulation, Unitel will continue to receive *de facto* universal service support funding in the form of intrastate access rates that exceed its interstate access rates, we cannot accept a stipulation that does not propose to increase Unitel's basic service rates. The reason that a universal service fund recipient must increase basic rates to Verizon levels is stated in the Order Adopting Chapter 288:

> We believe a rural LEC must do all it can through its own rate structure to achieve a reasonable level of revenues to meet its revenue requirement (including a reasonable return on investment) prior to receiving support from the MUSF. We must enforce the provisions of the access parity statute, and before we provide any of the companies with USF support (much of which ultimately must come from ratepayers of other carriers), the companies must take all

> reasonable measures to meet their revenue requirement internally.

Public Utilities Commission, State Universal Service Fund for Local Exchange Carriers (Chapter 288), Order Adopting Rule (July 18, 2001) at 6.

On September 24, 2001, Unitel filed a letter supporting the Second Stipulation. The letter argued that requiring Unitel to increase its basic rates (by 70% in the example provided) would have only a *de minimis* effect on access rates. We rejected a similar argument in rejecting the First Stipulation:

> [Unitel] proposes that it should not reduce its intrastate access charges and that it should not increase basic rates for its customers. Unitel attempts to justify these results because it "questions" whether access charge reductions by independent telephone companies will result in "corresponding" reductions in retail toll rates. … We recognize that the failure of one relatively small ILEC to reduce its access charges to the level required by the statute might have a sufficiently small revenue impact on IXCs so as not to result in intrastate toll rates being higher than they would be if there were full compliance with the statute. To allow an exception for that reason, however, would be an unfair and arguably even cynical application of the access parity statute.

When the High Cost Universal Service Fund is operative, there is little question that Unitel will be eligible for universal service funding. According to the Second Stipulation, if Unitel reduced its access rates by $460,000, it would need to reduce them by an additional amount of $691,433 to bring them down to its interstate rates. While increases to its basic rates would make up some of the difference, such increases would almost certainly not be enough to allow Unitel to earn a reasonable return without universal service funding. Unitel is of course free to maintain whatever basic rates it wants if it reduces its intrastate access rates to interstate levels and does not seek universal support funding. However, Unitel has indicated that it will seek such funding. In its letter supporting the First Stipulation, it stated:

> Unitel is prepared to participate in the State USF program as it is implemented over the next few months so as to provide for future measured decreases in access rates coordinated with USF funding and required increases in local rates….

Given the fact the Unitel is presently receiving a considerable amount of *de facto* universal service funding and the high likelihood that it will seek formal USF funding when the USF is operational, we find that it is unreasonable for Unitel to maintain basic local exchange service rates that are as low as $5.50 for some

residential customers and $9.50 for single line business customers. An increase to basic rates now would allow a reduction (beyond the $460,000 proposed) in the amount of present *de facto* support and a lower amount of support under the USF if Unitel should receive such funding. For these reasons, we find the rate design proposal in the Second Stipulation unreasonable.

III. FURTHER PROCESS

A. Revenue Requirement

As discussed above, we agree that the proposed revenue requirement reduction of $460,000 contained in the Second Stipulation is reasonable. We are not able to approve the proposed reduction in revenues, however, because of the "integral" nature of the Stipulation. Nevertheless, Unitel has now agreed on two separate occasions (the First and Second Stipulations) that its revenues exceed its revenue requirement by $460,000.

As stated in the Stipulation that we approved in Docket No. 98-212 (the precursor to the present case), the parties and the Commission intended this rate proceeding to end on May 30, 2001. Because the case used a 1999 test year, albeit with some adjustments, it appears that Unitel's overearnings have been occurring for a substantial period of time. We have not been able, however, to implement the $460,000 rate decrease because the parties have twice coupled their revenue requirement agreement with unacceptable rate designs in "integral" stipulations.

We believe that it is unreasonable to further delay the agreed rate decrease. Accordingly, we will order the parties to show cause why the Commission should not order the Company to implement the $460,000 revenue decrease to access rates while we address rate design in further proceedings. Any attempted showings shall be in the form of written memoranda or briefs that must be filed on or before October 5, 2001. If a party believes that the Commission should afford it more process than this opportunity to be heard in writing, the party should describe the additional process it desires and the reasons for its request.

We recognize that a party has a right to formal hearings and briefing on an adjudicatory issue such as a revenue requirement, and that it is never required to stipulate to part of a case if it views all parts of the case as integral. We see no reason, however, why the revenue requirement and rate design issues in this case must be integral and cannot be severed. Given the amount of time this case has taken, we believe it would be unreasonable for Unitel to insist on further formal process, when it is obvious that there is no dispute as to revenue requirement, and that the dispute between the parties and the Commission about rate design is readily severable.

If a party agrees that it is reasonable to sever rate design from revenue requirement and to implement a revenue reduction immediately (in the form of an access rate reduction exactly as proposed in the Second Stipulation that would be

effective until resolution of the rate design issues), it needs only to file a letter to that effect.

B. Rate Design

We will address rate design issues as described in this subsection. On or before October 19, 2001, the parties shall file memoranda or briefs that address the rate design proposal described below. The memoranda or briefs may also present alternative rate designs, but a party should provide full justification for any proposal it makes. If a party believes that we should afford additional process, it should make such a request in its memorandum or brief and state the reasons for the request.

The parties should address whether the Commission should require Unitel to increase its local basic service rates to levels that are half way between their present levels and Verizon's rates for equivalent calling areas, with no increase to exceed 100 percent. We note that all of the companies that stipulated to amortization provisions in the predecessor round of rate proceedings (for Unitel, Docket No. 98-812), and that have completed the successor round of cases, have agreed to similar increases to basic rates. Those include six TDS companies and Mid-Maine Telecom.

We also note, as discussed above, that Unitel apparently will be eligible and has stated it will apply for universal service funding under the provisions of Chapter 288. Section 3(B) of the Rule requires that a recipient of USF must have basic rates that are no less than those of Verizon for it to receive USF, although the Rule also permits those rates to be phased in over a three-year period. Even if we presently permitted Unitel to delay the implementation of higher basic rates, any such delay would be short-lived, because we expect to choose an Administrator for the Fund shortly and for the Fund to be operational by early next year. Once the Fund is operational, we will not permit any ILEC to maintain intrastate access rates that exceed its interstate (NECA 5) levels. A rural ILEC that cannot meet its revenue requirement with intrastate access rates that are equal to its interstate rates and local basic rates that comply with the requirement of Chapter 288 may apply for USF. We will not permit rural ILECs to use access rates that exceed interstate levels as a *de facto* USF and thereby avoid raising basic local rates.[1] A rural ILEC may, of course, maintain whatever local rates it wants, as long as it reduces its intrastate access rates to NECA 5 levels and foregoes universal service funding.

Accordingly, we

[1]Once the high cost USF becomes operational, there no longer will be any need for a rural ILEC to maintain "interim" intrastate access rates that exceed its interstate rates, as permitted by the "Interim Order" issued on January 28, 1999 in the ITC rate cases (Docket Nos. 98-891 et al.) that preceded the current round of cases.

1. REJECT the Second Stipulation filed in this case on September 20, 2001 as unreasonable; and

2. ORDER the parties to make filings as required in Part III of this Order.

Dated at Augusta, Maine, this 1st day of October, 2001.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.